

001 11

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF	)	
TOP LINE, INC.,	)	
	)	
Appellant,	)	PCHB No. 80-7
	)	
v.	)	FINAL FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW
PUGET SOUND AIR POLLUTION	)	AND ORDER
CONTROL AGENCY,	)	
	)	
Respondent.	)	
<hr/>		

This matter, the appeal from the issuance of a \$250 civil penalty for the alleged violation of Section 8.02(2) of Regulation I and RCW 70.94.775(2), having come on regularly for formal hearing on the 12th day of March, 1980, in Seattle, Washington, and appellant Top Line, Inc., represented by its secretary-treasurer Steward Underwood and respondent, Puget Sound Air Pollution Control Agency, appearing through its attorney Keith D. McGoffin, with Nat W. Washington, Chairman, presiding, and the Board having considered the exhibits, records and files herein, and having reviewed the Proposed Order of

1 the presiding officer mailed to the parties on June 10, 1980 and  
2 again on August 5, 1980, and more than twenty days having elapsed  
3 from said service; and

4 The Board having received no exceptions to said Proposed Order  
5 and the Board being fully advised in the premises; NOW THEREFORE,

6 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said Proposed  
7 Order containing Findings of Fact, Conclusions of Law and Order dated  
8 the 10th day of June, 1980, and incorporated by reference herein and  
9 attached hereto as Exhibit A, are adopted and hereby entered as the  
10 Board's Final Findings of Fact, Conclusions of Law and Order herein.

11 DATED the 18<sup>th</sup> day of September, 1980.

12 POLLUTION CONTROL HEARINGS BOARD

13  
14   
15 NAT W. WASHINGTON, Chairman

16  
17   
18 DAVID AKANA, Member

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF  
TOP LINE, INC.,

Appellant,

v.

PUGET SOUND AIR POLLUTION  
CONTROL AGENCY,

Respondent.

PCHB No. 80-7

PROPOSED FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

This matter, the appeal from the issuance of a \$250 civil penalty for the alleged violation of Section 8.02(2) of Regulation I and RCW 70.94.775(2), came before the Pollution Control Hearings Board, Nat W. Washington, sitting alone, presiding at a formal hearing in Seattle, Washington, on March 12, 1980. Appellant Top Line, Inc., was represented by its secretary-treasurer Stewart Underwood. Respondent was represented by its attorney Keith D. McGoffin.

Having heard the testimony, having examined the exhibits and having considered the contentions of the parties, the Board makes these

EXHIBIT A

FINDINGS OF FACT

I

Pursuant to RCW 43.21B.260, respondent has filed with the Board a certified copy of its Regulation I and amendments thereto, which are noticed.

II

On November 8, 1979, the Department of Ecology declared a Forecast Stage of an air pollution episode for all counties west of the cascades, which continued to be in force until November 16, 1979.

The declaration, inter alia stated:

Under a Forecast Stage, open fires shall be curtailed. No fuel shall be added to any existing open fires and no new fires may be ignited. These actions are necessary to prevent a build-up of air contaminants during this period of poor ventilation. This requirement applies to all open burning, including householders burning trash, field burning, slash burning, land clearing, metal salvage operations, and any other open fires in Western Washington Counties.

III

On November 15, 1979, while the Forecast Stage of an air pollution episode was still in force, appellant Top Line, Inc., a contractor of Floyd Hewitt, was conducting land clearing operations on or near lot No. 29 - 11th Place NW, Issaquah, and was continuing to add fuel to an already existing land clearing fire.

IV

On November 13, 1979, about five days after the episode had been declared, the chief of the Issaquah fire department saw a large column of smoke. He went to the scene of the fire and contacted personnel of

PROPOSED FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

Top Line, Inc., who were maintaining the fire. He warned that an air pollution episode was in effect. The evidence is conflicting whether or not he stated that no more fuel should be added and that the fire should be allowed to go out.

#### V

Section 8.02 of Regulation I provides that it shall be unlawful for any person to cause or allow any outdoor fire during any stage of an air pollution episode as defined in RCW 70.94.710 thru 70.94.730.

#### VI

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings the Board comes to these

#### CONCLUSIONS OF LAW

##### I

The appellant violated the Department of Ecology Declaration of a Forecast Stage of an air pollution episode, which was made on November 8, 1979, and continued to be in force until November 16, 1979, by adding fuel to an existing land clearing fire, located on or near lot No. 29, - 11th Place NW, Issaquah, Washington.

##### II

Appellant violated Regulation I, Section 8.02(2) and RCW 70.94.775(2) by continuing to place more fuel on the existing land clearing fire during a declared Forecast Stage of an air pollution episode.

##### III

Whether the Issaquah fire chief warned Top Line, Inc., not to put

more fuel on the land clearing fire is immaterial. It was the responsibility of Top Line personnel to know the laws, rules and regulations applicable to land clearing fires including those relating to the Declaration of a Forecast Stage of an air pollution episode.

IV

In view of appellant's record of no prior violation of Regulation I, and in light of the circumstances of this case, \$100 of the \$250 civil penalty should be suspended for one year.

V

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions the Board enters the following

ORDER

The \$250 civil penalty is affirmed, provided, however, that \$150 of the penalty is immediately payable, the remainder of \$100 is suspended on the condition that appellant not violate respondent's Regulations for a period of one year from the date of this order.

DATED this 10<sup>th</sup> day of June, 1980.

POLLUTION CONTROL HEARINGS BOARD

  
NAT W. WASHINGTON, Chairman

DAVID AKANA, Member

PROPOSED FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER